IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:-13-04-2005

Coram:

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice S.K. KRISHNAN

Civil Misc., Appeal No. 333 of 2001

M/s. United India Insurance
Company Ltd.,
No.38, Anna Salai, Chennai-2.

.. Appellant/2nd Respondent.

Vs.

1. S. Abhinesh - Minor,
   represented by father and
   next friend M. Suresh.

2. R. Sathiyamurthy.
   [NDW] .. Respondents[Petitioner & 1st Respondent]

Civil Misc. Appeal filed under Section 173 of the Motor vehicles Act, against judgment and decree dated 10-8-2000 made in M.C.O.P.No. 2971/1996 on the file of Motor Accidents Claims Tribunal (V Judge, Small Causes Court), Chennai.

Mr. K.S. Narasimhan:- For Appellant.

Mr. A. Jothi:- For 1st Respondent.

JUDGMENT

(Judgment of the Court was delivered by P. Sathasivam, J.,)

Messrs United India Insurance Company, Chennai-2 is the appellant. The appellant challenges the quantum determined by the Motor Accidents Claims Tribunal, Chennai dated 10-8-2000 made in M.C.O.P.No. 2971 of 1996. Since the appellant-Insurance company challenges the quantum determined by the Tribunal, it is unnecessary for this Court to go into the finding relating to negligence and the liability of the Insurance Company.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

2. In respect of grievous injuries sustained in a road accident, the minor claimant/first respondent herein, namely, S. Abhinesh prayed for a compensation of Rs.2,50,000/-through his father and next friend M. Suresh. His father was examined as P.W.1 and he deposed that due to the accident, his son sustained fracture in his right hand, fracture in his right shoulder, and damage to his right eye, and he had taken treatment for a period of 3 months at Stanley Government Hospital. Ex. P-1 is the discharge summary; Ex. P-2 is the medical report issued by Opthalmic Hospital, Egmore; Ex.P-3 is the O.P. chit; and Ex. P-4 is the certificate issued by Doctor. Apart from the evidence of P.W.1, Doctor who assessed the disability, was examined as P.W.3. In his evidence, he has stated that on 10-1-99 he examined the minor injured claimant, aged about 8 years and verified the hospital records. He also noticed skin grafting and damage to his eyes and also fracture in right hand. He assessed disability in so far as the defect in his right eye to an extent of 50 per cent; and for the fracture in right hand, to an extent of 50 per cent; altogether the total assessment of disability is 100 per cent. He issued disability certificate which has been marked as Ex. P-8. X-ray pertaining to his right hand was marked as Ex. P-2; and X-ray pertaining to his head marked as Ex. P-10.

3. Based on the above evidence, the Tribunal has granted Rs.3,500/- towards transport charges, Rs.1,300/- towards nutritious food. The Tribunal has also granted Rs.15,000/- towards medical expenses based on the evidence of P.W.1 and the documents. Considering the injury on the right eye and fracture on the right hand, the length of period of treatment in the hospital, the skin grafting surgery etc., the Tribunal has granted a sum of Rs.50,000/- towards pain and suffering. Taking note of the disability, namely, 50% plus 50% = total 100 per cent and the evidence of P.W.3, and inasmuch as the injured claimant being aged about 8 years at the time of the accident, the Tribunal granted Rs.1,60,000/-towards permanent disability. Inasmuch as the injured claimant has to prolong his life with the said disablement till his life time and it would affect his future earning power, the Tribunal has fixed Rs.60,000/- towards his loss of earning capacity, and altogether it passed an award of Rs.2,29,800/-.

4. Mr. K.S. Narasimhan, learned counsel appearing for the appellant, would submit that the award of Rs.1,60,000/- towards permanent disability and another Rs.60,000/- towards loss of earning power is on the higher side. It is his further contention that the interest awarded at the rate of 12 per cent is also excessive. In so far as the amount towards permanent disability, the Doctor-P.W.3 who assessed the disability is not an Opthalmist, however, he is competent to assess the disability in respect of ortho. In the light of the objection raised by the learned counsel for the appellant, we summoned the injured boy and verified his disability. On verification, we are

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

satisfied that it would be difficult for him to use his right hand. He cannot lift or raise his right hand beyond certain level. We also noticed a deep injury near right eye. We also verified the discharge summary, medical report issued by Opthalmic Hospital, Egmore and other documents. Considering the tender age of the injured and of the fact that he has to settle his remaining period of life with the said disability, we are of the view that the amount of Rs.1,60,000/- for permanent disability appears to be not on the higher side. For the said reasons, we are not inclined to disturb the same. Likewise, for the same reasons, we intend to confirm the amount of Rs.60,000/- granted towards future loss of earning power. As said earlier, he cannot use his right hand for writing or for lifting any object throughout his life time. In such a circumstance, we are unable to accept the argument of the learned counsel for the appellant.

5. Though learned counsel appearing for the first respondent-claimant prayed for higher compensation than that awarded by the tribunal, admittedly no cross objection in this appeal or independent appeal praying for higher compensation has been filed before this Court till this time. Even otherwise, in the absence of additional materials, we are not inclined to accede to her request. Coming to the contention relating to rate of interest, it is to be noted that the Tribunal passed the impugned award on 10-8-2000. It is not in dispute that only from 2001, based on the change of economic policy and money transaction and the pronouncement of the Supreme Court, the rate of interest has been reduced to 9 per cent though the Act provides simple interest for the award amount. Since the accident occurred in the year 1995, judgement was delivered in 2000 and the injured claimant being a minor lives with the same disablement even to-day, we are not inclined to alter the rate of interest. We make it clear that this cannot be cited as a precedent for other cases and considering the peculiar circumstances of this case referred to above, we are confirming the rate of interest as awarded by the Tribunal.

6. In the light of what is stated above, we do not find any valid ground for interference; accordingly the Appeal fails and the same is dismissed. No costs.

7. Mr. Suresh, the father and next friend of Minor S. Abhinesh, is permitted to withdraw the accrued interest once in three months directly from the Bank, for the welfare of the minor.

WEB COPY

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

https://hcservices.ecourts.gov.in/hcservices/

To:-

1.The Registrar,
Court of Small Causes,
Chennai.

2. The Section Officer,
VR Section,
High Court, Madras.

One cc to Mr.K.S.Narasimhan, Advocate SR.17577.

One cc to Mr.N.M.L.Babu, Advocate SR.17582.

C.M.A.No. 333 of 2001

MDR [co]
MK

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/